

EXHIBIT “H”

351507

KOBAYASHI, SUGITA & GODA

LEX R. SMITH 3485-0

ANN C. TERANISHI 7318-0

ANNE E. LOPEZ 7906-0

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Attorneys for Defendants

FLEMING COMPANIES, INC.,

C&S LOGISTICS OF HAWAII, LLC,

C&S WHOLESALE GROCERS, INC., and

C&S ACQUISITIONS, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;

Plaintiff,

vs.

HAWAIIAN EXPRESS SERVICE,
INC., a California corporation; H.E.S.
TRANSPORTATION SERVICES, INC.,
a California corporation; CALIFORNIA
PACIFIC CONSOLIDATORS, INC., a
California corporation; JEFFREY P.
GRAHAM and PETER SCHAUL,
California citizens; MARK DILLON and
TERESA NOA, BRIAN
CHRISTENSEN, Hawaii citizens;
FLEMING COMPANIES, INC., an
Oklahoma corporation; C&S
(Caption Continued).

) CIVIL NO. CV03-00385 SOM LEK
) (Copyright)

) NOTICE OF HEARING MOTION;
) DEFENDANTS FLEMING
) COMPANIES INC., C&S LOGISTICS
) OF HAWAII, LLC, C&S
) ACQUISITIONS LLC, AND C&S
) WHOLESALE GROCERS INC.'S
) MOTION TO SET ASIDE ENTRY OF
) DEFAULT; MEMORANDUM IN
) SUPPORT OF MOTION;
) DECLARATION OF LEX R. SMITH;
) EXHIBITS "A"- "C"; CERTIFICATE
) OF SERVICE

) Hearing:

) Date: February 17, 2004

) Time: 11:00 a.m.

) Judge: Hon. Leslie A. Kobayashi

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349174v.2

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TERESA NOA, BRIAN

CHRISTENSEN, Hawaii citizens;

(CAPTION CONTINUED)

) CIVIL NO. CV03-00385 SOM LEK

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)

) DEFENDANTS FLEMING

) COMPANIES, INC., C&S

) LOGISTICS OF HAWAII, LLC,

) C&S WHOLESALE GROCERS,

) INC., AND C&S ACQUISITIONS,

) LLC'S ANSWER TO PLAINTIFF

) WAYNE BERRY'S FIRST

) AMENDED COMPLAINT FILED

) AUGUST 13, 2003; CERTIFICATE

) OF SERVICE

)


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EXHIBIT A

THIRD DEFENSE



The Answering Defendants give notice that they intend to rely on the defense that the conduct complained of is expressly authorized by the license signed by Plaintiff.

FOURTH DEFENSE

The Answering Defendants give notice that they intend to rely upon the defense of failure of consideration.

FIFTH DEFENSE

The Answering Defendants give notice that they intend to rely upon the defense of fraud.

SIXTH DEFENSE

The Answering Defendants give notice that they intend to rely upon the defenses of waiver, estoppel, and laches.

SEVENTH DEFENSE

The Answering Defendants give notice that they intend to rely upon the defenses of unclean hands and bad faith.

EIGHTH DEFENSE

The Answering Defendants intend to rely on the defense of fair use.